

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

v.

19-CR-227-JLS

PETER GERACE, JR., and  
JOSEPH BONGIOVANNI,

Defendants.

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**MOTION TO FILE GOVERNMENT'S RESPONSE  
TO DEFENDANTS' MOTION OUT OF TIME**

PLEASE TAKE NOTICE that upon the annexed Affidavit of Joseph M. Tripi, Assistant United States Attorney, the undersigned moves this Court for a *nunc pro tunc* extension of time to file the government's response to the defendants' Motion for Adoption of Search Warrant Application Disclosure Order Similar to That Issued by the Court in U.S. v. Hawitt, dated November 5, 2021. See Doc. No. 210.

DATED: Buffalo, New York, December 6, 2021.

TRINI E. ROSS  
United States Attorney

BY: s/JOSEPH M. TRIPI  
Assistant United States Attorney  
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Western District of New York  
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19-CR-227-JLS

PETER GERACE, JR., and  
JOSEPH BONGIOVANNI,

Defendants.

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**AFFIDAVIT**

STATE OF NEW YORK    )  
COUNTY OF ERIE        )    SS:  
CITY OF BUFFALO        )

**JOSEPH M. TRIPI**, being duly sworn, deposes and states:

1.     I am an Assistant United States Attorney for the Western District of New York assigned to the prosecution of the instant indictment. As such, I am fully familiar with the facts and circumstances concerning the instant defendants and this investigation.

2.     I make this affidavit in support of the government's motion for a *nunc pro tunc* extension of time to file its response to the defendants' Motion for Adoption of Search Warrant Application Disclosure Order Similar to That Issued by the Court in U.S. v. Hawitt, dated November 5, 2021. See Doc. No. 210.

3. On November 5, 2021, defendant Peter Gerace, through counsel, filed a Motion for Adoption of Search Warrant Application Disclosure Order Similar to That Issued by the Court in U.S. v. Hawitt. Id. On that same date, this Court ordered the government to respond the motion by November 26, 2021, and the defendant to file a response by December 6, 2021. See Doc. No. 211. On that same day, co-defendant Joseph Bongiovanni filed a motion for joinder to defendant Gerace's motion. See Doc. No. 212. The Court subsequently granted co-defendant Bongiovanni's motion and ordered that the briefing schedule applicable to defendant Gerace "shall apply to [co-defendant] Bongiovanni as well." Doc. No. 213.

4. On November 26, 2021, the government failed to file a response to the defendants' motion. In particular, during this time period, the undersigned had personal family-related matters occurring, and although the undersigned had the proper response dates calendared, the undersigned made an error during that time-frame and misread the defense reply deadline, which is today, December 6, 2021, as being the date for the government's response. Only when the undersigned sought to make efforts for an extension, and in preparation for speaking with defense counsel earlier today, did I realize I had actually missed the government's deadline to respond.

5. Earlier today, your affiant communicated with both defendant Gerace's attorney, Joseph M. LaTona, Esq., and co-defendant Bongiovanni's attorney, James P. Harrington, Esq., who both confirmed their lack of objection to the government's motion to file the government's response out of time and the government's proposed scheduled for the

filing of the response and defendants' replies, as follows. The government respectfully requests that the Court order that the government's response be filed by December 13, 2021, and the defendants' replies be filed by December 20, 2021.

6. Because all defense motions remain pending, and evidentiary hearings are continued until December 28, 2021, before United States Magistrate Judge Michael J. Roemer, there is no prejudice to either defendant, nor delay in either defendant or public's interests in a Speedy Trial that is impacted by this request for a *nunc pro tunc* extension request.

7. While the government submits that the same reasons underlying the Court's Decision and Order (see Doc. No. 208) denying the motion for unsealing the search warrant affidavits will also provide the framework for the government to request denial of the instant motion, nevertheless the government would like an opportunity, despite the undersigned's error, to fully respond to this most recent defense motion regarding this issue.

8. For these reasons, and because of the importance of the Court having a full briefing from each party prior to rendering its decision, your affiant believes that good cause exists for the granting of the relief sought by the government.

**WHEREFORE**, for the reasons stated above, the government respectfully requests this Court find good cause exists for the filing of the government's response to the defendants' Motion for Adoption of Search Warrant Application Disclosure Order Similar to That Issued

by the Court in U.S. v. Hawitt, dated November 5, 2021, and for the adoption of the dates for a response and reply, as proposed by the government and without objection by the defendants.

TRINI E. ROSS  
United States Attorney

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Subscribed and sworn to before me

this 6th day of December, 2021.

s/ELIZABETH HARF, Commissioner of Deeds  
In and for the City of Buffalo, New York.  
My Commission Expires Dec. 31, 2022.